

**REPLY UNDER 37 C.F.R § 1.116
EXPEDITED PROCEDURE
TECHNOLOGY CENTER 2400**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	James Stewart McCormick et al.
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For	:	METHOD AND APPARATUS FOR
	:	NETWORK ELEMENT RESOURCE
	:	UTILIZATION TRACKING
	:	
Serial No.	:	10/670,257
	:	
Filed	:	September 26, 2003
	:	
Art Unit	:	2446
	:	
Examiner	:	Scott M. Sciacca
	:	
Att. Docket	:	ALC 3408
	:	
Confirmation No.	:	4907

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
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Sir:

This Pre-Appeal Brief Request for Review responds to the Final Office Action dated February 24, 2010 and is filed concurrently with a Notice of Appeal. Applicant hereby requests review of the rejections in the above-identified application in view of the concurrently-filed Notice of Appeal. Claims 1-4, 6-20, 22-34, 36-39, and 41-46 are pending in this application. Claims 1, 17, 33, 34, 39, 44, 45, and 46 are independent.

On pages 2-9, the Office Action rejects claims 1-4, 6-20, 22-34, 36-39, and 41-44 under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent Number

7,143,153 to Black et al. ("Black") in view of U.S. Patent Number 6,834,304 to Nisbet et al. ("Nisbet"), further in view of U.S. Patent Number 6,088,688 to Crooks et al. ("Crooks"), and yet further in view of U.S. Patent Number 5,796,633 to Burgess et al. ("Burgess"). Applicant respectfully submits that the statement of this rejection on page 2 is inaccurate because the Office Action repeatedly takes "Official Notice" in addition to relying upon Black, Nisbet, Crooks, and Burgess.

Independent claim 1 recites, in part, the following subject matter: "generating an alarm for the resource and resetting the timer associated with the resource only when the alarm has been generated for the resource" (emphasis added). Similar subject matter appears in independent claims 17, 33, and 45.

On page 4, the Office Action correctly concedes that Black fails to disclose this subject matter. Applicant respectfully submits that Nisbet and Crooks also fail to disclose, teach, or suggest this subject matter. On pages 5 and 6, the Office Action attempts to remedy this admitted deficiency in Black in view of Nisbet and further in view of Crooks by applying the teachings of Burgess.

In response, Applicant respectfully submits that Burgess only discloses the use of a log capture thread [Fig. 3: 46]. While Burgess does describe avoidance of "sending alerts out twice" in line 58 of col. 13, Burgess does not prevent generation of repeated alarms. Instead, as disclosed in lines 58-59 of col. 13, the log capture thread of Burgess automatically filters out any alert events that were placed in the local event log. Thus, because Burgess still permit repeated alerts to be generated and only filtering alerts out of the local event log after they have been generated, Applicant respectfully submits that Burgess clearly fails to disclose, teach, or suggest the recited subject matter.

On page 10, the Office Action alleges that subject matter related to prevention of repeated alarms "is not a feature that is recited in the claims." In response, Applicant respectfully submits that this subject matter is clearly present because the claims describe how the timer is related to the alarms. If the timer has not expired, then no alarm is generated. In contrast, as described above, Burgess does generate repeated alarms.

Independent claim 34 recites, in part, the following subject matter: “checking whether a flag associated with the resource indicates that an alarm has recently been generated for the resource; and wherein if the flag does not indicate that the alarm has recently been set, a step of generating the alarm is carried out and the flag is set to indicate that the alarm has recently been generated.” Similar subject matter appears in independent claims 39, 44, and 46. Applicant respectfully submits that the references of record, alone or in combination, fail to disclose, suggest, or teach this subject matter.

On page 9, the Office Action indicates that claims 15-46 are rejected for the “same reasons as stated above.” In response, Applicant respectfully submits that independent claims 34, 39, 44, and 46 relate to use of a flag to avoid repeated generation of alarms, not a timer. Because the Office Action fails to provide any articulated reasoning regarding obviousness of claims reciting a flag, Applicant respectfully submits that the rejection is facially deficient.

On page 12, the Office Action alleges that “alarms are not generated for old events.” In response, Burgess is not mentioned in the current rejection. Black describes the use of flags to indicate if the user may change certain profile attributes. As disclosed in lines 60-65 of col. 48 in Black, “[A] flag may be set to indicate that the user is not allowed to change his/her password, and an account disable flag may be set to disable a particular profile/account.” Thus, Black’s flags are not used to prevent unnecessary repetition of alarms.

Although Black does disclose a method to suppress false alarms, this is done using both a “rising and falling” threshold, as set forth in lines 51-64 of col. 1. By generating alarms only when both upper and lower thresholds are reached, Black eliminates the main feature of the present system, that is, to notify the operator when the system is either over or under utilized.

According to MPEP § 2144.03, “Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While ‘official notice’ may be relied on, these circumstances should be rare when an

application is under **final rejection**" (emphasis added). In this case, the Office Action relies upon "Official Notice" for claims 7, 13, and 14. See pages 7 and 8.

For claim 7, the Office Action correctly concedes that Black lacks the subject matter of generating a report that includes "utilization of any **identified** resources." The Office Action then takes Official Notice that this subject matter is "well known and expected." In response, Applicant respectfully submits that taking Official Notice is improper here because the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. Further, Black does not provide for measurement of the utilization of identified resources, so the proposed Official Notice cannot be applied to Black.

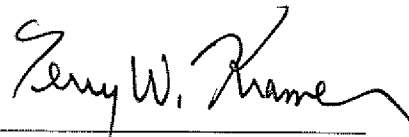
For claim 13, the Office Action correctly concedes that Black lacks the subject matter of performing steps of comparing resource utilization to a threshold and identifying the resource "upon receipt of a **call connection establishment** signal." The Office Action then takes Official Notice that this subject matter is "well known and expected." In response, Applicant respectfully submits that taking Official Notice is improper here because the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. Further, Black does not use a call connection establishment signal in the claimed manner, so the proposed Official Notice cannot be applied to Black.

For claim 14, the Office Action correctly concedes that Black lacks the subject matter of generating an alarm only if "the alarm has not been generated since the utilization of the resource last rose above the specified **threshold**." The Office Action then takes Official Notice that this subject matter is "well known and expected." In response, Applicant respectfully submits that taking Official Notice is improper here because the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. As correctly conceded by the Office Action on page 3, Black does not disclose the "specified threshold." Thus, the proposed Official Notice cannot be applied to Black.

For the reasons detailed above, Applicant respectfully submits that independent claims 1, 17, 33, 39, and 44-46 are allowable over the references of record. Claims 2-4 and 6-16 depend from claim 1. Claims 18-20 and 22-32 depend from claim 17. Claims 36-38 depend from claim 34. Claims 41 and 42 depend from claim 39. Thus, claims 2-4, 6-16, 18-20, 22-32, 36-38, 41, and 42 are allowable at least due to their respective dependencies from allowable claims. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 1-4, 6-20, 22-34, 36-39, and 41-46 under 35 U.S.C. § 103(a).

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,
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Date: April 6, 2010

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